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In re Application of

CURRID

Application No.: 10/089,587

PCT No.: PCT/GB97/03351

Int. Filing Date: 04 December 1997

Priority Date: 04 December 1996

Attorney Docket No.: 232.7548USU

For: NON-RETURN DEVICE

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This decision is in response to applicant's "Petition For Revival of patent Application Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 29 March 2002. Applicant included the \$1280.00 petition fee.

BACKGROUND

On 04 December 1997, applicant filed international application PCT/GB97/03351, which claimed priority of an earlier application filed 04 December 1996. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 June 1999.

On 29 March 2002, applicant filed the present petition accompanied by a check in the amount of \$1280.00; a transmittal letter for entering the U.S. national stage under 35 U.S.C. 371; payment of the U.S. basic national fee; a specification, preliminary amendment; a copy of the published international application; 2 sheets of drawings and a copy of the International Search Report.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

As to Item (1), the proper reply was payment of the full, U.S. basic national fee. Applicant has included a check in the amount of \$890.00 as payment of this fee, thus satisfying Item (1) above.

With regard to Item (2), applicant included payment of the petition fee along with the present petition.

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (1), (2) and (4) above.

Regarding Item (3), in his signed declaration, Mr. William Doughty states:

In this discussion, Mr. Gale had indicated that Europe, the Middle East and Australasia were the intended markets for the product to which the patent applications related. I therefore instructed Marks & Clerk to cause the PCT application to enter the national phase in the appropriate states and they acted accordingly.

This statement appears to indicate that the decision not to enter the United States national stage in a timely manner was an intentional one and that only after a 28 July 2001 meeting between Mr. Doughty and Mr. Currid was a decision made to seek entry into the national stage in the United States. As such, before applicant's petition under 37 CFR 1.137(b) can be granted applicant must provide an explanation further detailing the decision-making which resulted in certain national stages being entered in a timely fashion on 04 June 1999 which shows that the lack of timely entry into the United States was truly unintentional and not a calculated business decision.

It is also noted that an additional eight months elapsed between the 28 July 2001 meeting of Messrs. Doughty and Currid and the filing of the present petition to revive. Applicant is advised to provide a more detailed explanation of this delay as two years had already passed from the deadline for entering the national stage and the 28 July 2001 discussion.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

CONCLUSION

For the reasons stated above, the petition for revival is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request

should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

A handwritten signature in black ink, appearing to read "Derek A. Putonen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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